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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

September 26, 2006

AO-06-08

Christine A. Dorchak, Esq.
The Committee to Protect Dogs
P.O. Box 442176
Somerville, MA 02144

Re: Committee to Protect Dogs

Dear Ms. Dorchak:

This letter is in response to your recent request for an opinion regarding a proposed policy that would be adopted by the Committee to Protect Dogs ("the Committee"), to allow the Committee to refund a particular campaign contribution.

You have stated that the Committee, a ballot question committee registered with this office, has a contributor that has requested the return of its 2005 contribution. In response to the contributor's request, the Committee has drafted a policy that, if approved by this office, would allow the requested refund.

The policy would allow refunds more than 90 days after receipt¹ of "restricted contributions." "Restricted contributions" would be defined as contributions made only for a specific purpose or purposes, per the written instructions of the donor." The proposed policy would allow the Committee to refund a portion of such contributions.

In the particular instance that has prompted your request for an opinion, the contributor expressed the desire that the contribution be used for the purpose of paying for television advertising. The contribution was not used for that purpose. Although the question for which the Committee was organized will not be on the November 2006 state election ballot, you anticipate that the same or a substantially similar question will be on the ballot in the future. If the contribution may not be returned, you will use it for television advertising in connection with a future election.

¹ Although you have asked for a description of the circumstances that would allow the refund of contributions more than 90 days after deposit, the relevant regulation generally restricts the refund of contributions to the first 90 days after *receipt*. See 970 CMR 1.04(9).

You have asked this office to review the proposed policy to determine if it would comply with the campaign finance law. In addition, you have asked for guidance regarding any other appropriate means for returning contributions after 90 days have elapsed from the receipt of the contributions in the Committee's account.

QUESTIONS

- (1) Would the proposed refund policy comply with the campaign finance law?
- (2) What are the appropriate means for returning contributions after 90 days have elapsed from the receipt of the contributions in the Committee's account?

ANSWERS

- (1) No, the campaign finance law does not allow refunds based on whether a contribution is ultimately used in accordance with the intent of the contributor.
- (2) Contributions may be refunded after 90 days have elapsed from date of receipt if the Committee determines that the contribution creates an appearance of a conflict of interest or other possible impropriety. Alternatively, a contribution may be refunded more than 90 days after receipt if making the refund would be consistent with a committee policy allowing refunds to a particular category or type of contributor and the entitlement to the refund can be determined objectively when the contribution is received.

DISCUSSION

Section 6 of the campaign finance law, M.G.L. c. 55, states that ballot question committees may make expenditures "for the enhancement of the ... principle, for which the committee was organized" so long as such expenditure is not primarily made for any person's personal use. In accordance with Section 6, this office has issued regulations regarding refunds. Specifically, 970 CMR 1.04(9) generally describes the circumstances in which refunds may be made. The regulation states, in relevant part, that once a contribution has been deposited and more than ninety days have elapsed since the receipt of the contribution, a refund of all or part of the contribution may be made if:

- (b) The political committee or candidate has established or establishes a refund policy regarding contributions from a particular category or type of contributor. This policy, and the refund of such contributions, must be stated and applied in an open and consistent manner (emphasis added).

This office advises candidates and political committees that the emphasized phrase refers to categories of contributors that can be objectively defined prior to the receipt of a contribution. For example, a candidate's committee may adopt a policy of not receiving contributions from PACs or from public employees who work for the candidate. See AO-91-27.

Although under the proposed policy the general category of restricted contributors might be defined, the entitlement to a refund of a particular contribution cannot be determined at the time the contribution is received.

In addition, the campaign finance law does not provide a mechanism by which a contributor may require a committee to use a contribution for a particular purpose. A policy allowing such conditional contributions does not appear to be contemplated by any provision of the statute, and

would impede the ability of a committee to use funds received in accordance with its discretion. A contributor may *ask* a committee to use a contribution for a particular purpose, but cannot in effect mandate such use.

Regarding the appropriate “means” for returning contributions more than 90 days after receipt, such refunds are appropriate when the contribution creates an appearance of a conflict of interest or other possible impropriety, or where there is a refund policy such as one of the policies described in AO-91-27, that would be consistent with the campaign finance law. Alternatively, a committee may establish a refund policy allowing refunds to a particular category or type of contributor if the entitlement to a refund can be determined objectively prior to the receipt of the contribution.

This opinion is provided within the context of the Massachusetts campaign finance law solely on the basis of representations made in your letter and in telephone conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in black ink and is positioned above the printed name and title.

Michael J. Sullivan
Director